IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.1184 of 2006.

Date of decision: 21.3.2007.

Ramesh Chand and another .....Petitioners

-Versus-

State of H.P. and others ....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioners: Mr.R.K. Gautam, Senior Advocate
With Mr.Naveen Bhardwaj, Advocate.

For Respondents: Mr.M.S.Chandel,A.G. with Mr.R.M. Bisht, Dy.A.G. for respondents 1& 13.
Mr.Ramakant Sharma, counsel for Respondents 2 to 7, 15 & 16.

Deepak Gupta, J.(Oral)

This writ petition is directed against the orders of the Financial Commissioner (Appeals), Himachal Pradesh dated 30.5.2006 and 5.9.2006.

Revision Petition No.34 of 2003 filed by respondents 2 to 4 herein was pending before the Financial Commissioner (Appeals). The petitioners herein were arrayed as respondents 4&5 in the said Revision Petition. It appears that a compromise was entered into between the respondents 2,3,4 (petitioners before the Financial Commissioner) and some of the private respondents other than the petitioners and such compromise deed was presented in the

Court of Financial Commissioner (Appeals) on 16.5.2006. The case was then adjourned to 30.5.2006. On that date one Sh.Aman Deep Prasher, Advocate appeared vice counsel for respondents, 1,2,3,4,5, 8 to 10 before the Financial Commissioner. In fact the petitioners herein were represented by Sh.B.C. Verma before the Financial Commissioner. The Financial Commissioner on the basis of the compromise entered into between the other parties disposed of the matter, allowed the Revision Petition and directed that the parties could seek re-partition on the basis of Jamabandi for the year 1991-1992.

Thereafter, the petitioners herein moved a Review Petition No.8 of 2006 before the Financial Commissioner and stated that neither they had instructed their counsel to enter into any compromise nor any statement was made by them or their counsel that they had entered into a compromise. The Financial Commissioner (Appeals) rejected this Review Petition vide the impugned order dated 5th September, 2006 and the reasoning given by her is as follows:

> "I have perused the case file no.34/2003 and have duly considered the arguments advanced by the ld.counsel for the petitioners. A perusal of the case file reveals that Shri B.S. Verma, Advocate who had duly filed his Power of Attorney on behalf of both the present petitioners was present before this court on 16.5.2006 when the compromise deed was presented and was fully aware of the contents of the compromise deed. Thereafter, when the matter was decided on 30.5.2006 the vice –counsel for the respondents (present petitioners) in the revision petition was present. Though the present petitioners

> have not signed the compromise, the fact that the ld. Counsel for the present petitioners was present when the compromise deed was presented before this court and he had not objected to the same, and also that the present petitioners were duly represented by the vice counsel when the matter was decided. Hence when the compromise was presented in presence of the counsel for the present petitioners and the order was announced in pursuance to the said compromise in presence of their vice counsel, the plea that the present petitioners had issued no such instructions to their counsel cannot be accepted. Besides vide the order passed in revision petition no.34/2003 on 30.5.2006 the parties have been given the liberty to re-seek partition if they so desire. Hence, no material prejudice seems to have been caused to the present petitioners."

The reasoning of the Financial Commissioner is not at all sound. Cases being pursued in courts of law or before quasi-judicial authorities which affect the rights of the parties cannot be decided on the basis of presumptions. The Financial Commissioner has presumed that since the counsel for the petitioners in the writ petition had not objected to the presentation of the compromise deed on 16.5.2006 therefore it has to be presumed that they had consented to the compromise. The law is just the opposite. Any compromise deed requires signatures of the parties or at least their counsel. The compromise must in unambiguous terms have been accepted by the parties. A compromise entered into between some of the parties cannot be enforced upon other parties to the litigation who have not consented to the same.

In view of the above discussion we are of the considered view that both the orders under challenge Annexures P-1 and P-2 are liable to be set-aside. The said orders are accordingly struck down and Revision Petition No.34 of 2003 is remitted to the Financial Commissioner (Appeals) who shall decide the same on its merits after hearing the parties. Petition is disposed of. No costs.

CMP No.1846 of 2006:

In view of the disposal of the writ petition, this application is also disposed of.

(Deepak Gupta),
Judge

March 21, 2007
PV

(Surinder Singh),
Judge